

DECISION no. 52 of 31st May 2012 on the processing of personal data using video surveillance means

In order to ensure an efficient protection of the fundamental rights and liberties of natural persons, especially of the right to the protection of personal data established by article 16 of the Treaty on the functioning of the European Union,

As the use of various techniques to capture, transmit, handle, record, store or communicate data comprised of images of individuals represent personal data processing operations, as provided in preamble (14) of Directive 95/46/EC of the European Parliament and Council of the 24th October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data, correlated with the provisions of Council of Europe's Convention no. 108/1981,

Taking into consideration the documents issued at the level of the Article 29 Working Group and other European bodies in connection with the processing of personal data using video surveillance means, which underline potential risks with regard to the observance of the right to private life and the right to the protection of personal data, as well as the need to observe the principle of proportionality of the personal data processed with regard to the processing's purpose,

Bearing in mind that the use of video surveillance means may infringe on the individual's right to private life, granted under art. 26 of Romania's Constitution, republished,

Taking into consideration the provisions of Law no. 53/2003 – the Labour Code, republished, and referring to the need to observe the employee's dignity and correct information as regards working conditions, as well as those referring to health and safety in labour,

In view of the provisions of art. 3 letter a) of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, with the subsequent modifications and amendments, which define personal data as any information referring to an identified or identifiable natural person,

Taking into consideration the provisions of art. 3 letter b) of Law no. 677/2001, with the subsequent modifications and amendments, which establish that personal data processing consist of any operation or set of operations carried out on personal data through automated or non-automated means, such as collection, recording, organisation, storage, adaptation or modification, extraction, consultation, use, disclosure to third parties by transmission, dissemination or in any other way adjoining or combination, blocking, deletion or destruction,

In view of the general rules on the processing of personal data, according to which personal data intended to be subjected to processing must be processed in good-will and in accordance with the relevant legal provisions, collected for purposes which are determined, legitimate and explicit, that they are adequate, pertinent and non-excessive in relation to the purpose for which they had been collected and then processed, accurate and, as the case may be, up to date, stored in a way that allows the identification of the data subject strictly for the duration required to achieve the purpose for which the data were processed,

Taking into consideration the ever growing use in today's society of video surveillance systems in public and private spaces in order to prevent any action which may infringe natural persons, their goods and public or private properties,
As regards the development of surveillance technologies by using video surveillance cameras, which may infringe on the fundamental rights and liberties of natural persons through their illegitimate, inadequate or excessive use,
Noting that numerous public or private entities have started using frequently video surveillance systems, mainly, in order to control the persons' or goods' movement, as well as the access into certain areas,
In view of the fact that certain public or private entities use excessively video surveillance means in order to control employee access into the work place, as well as to monitor the correctness and efficiency of their activities which may infringe on their private life,
In view of the need for the data controller to establish adequate measures to ensure the exercise of the right of the persons whose personal data are subjected to processing through video surveillance means and in relation to the nature of the data and the purpose for which they are processed,
Taking into consideration the data controllers legal responsibility to ensure the information of the data subjects with regard to the fact that in certain areas video surveillance is carried out,
In order to clarify the enforcement of the general rules on the processing of personal data through video surveillance means, as well as to avoid any abuse within the activities of processing personal data thorough video surveillance means, which may infringe on the private life of a significant number of natural persons,
Taking into account the provisions of Law no. 333/2003 on the security of objectives, goods valuables and the protection of persons, with the subsequent modifications and amendments as well as the Methodological norms of enforcement of the provisions of Law no. 333/2003 on the security of objectives, goods valuables and the protection of persons, approved by Government's Decision no. 301/2012,
In view of the provisions referring to the processing of images, contained within the legal provisions on audiovisual,
In view of the note of approval no. 21 of 28th March 2012 issued by the Dept. of Control within the National Supervisory Authority for Personal Data Processing, referring to the proposal to issue a decision on the processing of personal data through the use of video surveillance means
On the basis of the provisions of art. 3 paragraphs (5) and (6) of Law no. 102/2005 on the setting up, organisation and functioning of the National Supervisory Authority for Personal Data Processing, with the subsequent modifications, and those of art. 6 paragraph (6) of the Regulation on the organisation and functioning of the National Supervisory Authority for Personal Data Processing, approved by the Decision of the Standing Bureau of the Senate no. 16/2005, with the subsequent modifications and amendments,

the **president of the National Supervisory Authority for Personal Data Processing** issues the following decision:

Art. 1

(1) The collection, recording, storage, use, transmission, disclosure or any other processing operation of images using video surveillance, which allows the direct or

indirect identification of natural persons, constitute processing personal data operations which fall under the scope of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, with the subsequent modifications and amendments.

(2) The images on identified or identifiable persons, processed using video surveillance means may constitute personal data:

a) if they are not associated with the persons identification data; or

b) if they do not contain the image of the person filmed, but other information which may lead to the latter's identification (for example: a vehicle registration number plate).

(3) The provisions of paragraphs (1) and (2) are applicable regardless of the medium used to process the images, the technique used or type of equipment.

Art. 2

The installation and technical use of equipment and comprising elements of the video surveillance system is carried out in accordance with the legal provisions in this field.

Art. 3

The processing of personal data using video surveillance means is carried out whilst observing the general rules imposed by art. 4 of Law no. 677/2001 with the subsequent modifications and amendments, especially with regard to the principle of proportionality with the processing's purpose.

Art. 4

Video surveillance may be carried out, in principle, for the following purposes:

a) prevention and fight against criminal offences;

b) surveillance of road traffic and ascertaining the infringements of traffic rules;

c) ensuring the security and protection of persons, goods, valuables, houses and public utility installations, as well as their surroundings;

d) carrying out public interest measures or exercising public authority prerogatives;

e) carrying out a legitimate interest on the condition that no infringements are brought to the fundamental rights and liberties or the data subject's interest.

Art. 5

(1) Video surveillance may be carried out in open places and areas, destined to the public, including on public access ways on public or private domain, within the conditions imposed by law.

(2) Video surveillance cameras shall be mounted in visible places.

(3) The use of hidden video surveillance means is forbidden, except for the cases provided by law.

(4) The processing of personal data using video surveillance means in spaces which impose the privacy of persons such as fitting rooms, lockerrooms, shower stalls, toilets and other similar locations is forbidden.

Art. 6

The processing of personal data using video surveillance means is to be carried out with express and unequivocal consent of the data subject or under the conditions imposed by art. 5 paragraph (2) of Law no. 677/2001 with the subsequent modifications and amendments.

Art. 7

The processing of personal data using video surveillance means exclusively in connection with the racial or ethnic origin, political, religious or philosophical beliefs, trade-union membership, state of health and sex life is strictly forbidden, except for the cases provided by law.

Art. 8

(1) The processing of employees' personal data using video surveillance means is allowed in order to fulfil an express legal obligation of the data controller or on the basis of a legitimate interest, whilst observing the employees' rights, especially that of prior information.

(2) In the cases in which the provisions of paragraph (1) are not applicable, the processing of employees' personal data using video surveillance may only be carried out based on their express and freely given consent, whilst observing the employees' rights, especially that of prior information.

(3) The processing of employees' personal data using video surveillance inside the offices where they carry out their duties at the work place is forbidden, except for the cases expressly provided for by the law or with the notice given by the National Supervisory Authority for Personal Data Processing.

Art. 9

The processing of minors' personal data using video surveillance means, including their disclosure, is allowed only with the express consent given by the legal representative or under the conditions provided by art. 5 paragraph (2) of Law. no 677/2001, with the subsequent modifications and amendments, whilst observing their rights, especially that of prior information.

Art. 10

(1) The processing of personal data using video surveillance means, including their disclosure, carried out exclusively for journalistic, literary or artistic purposes, shall be carried out whilst observing the conditions imposed by Law no. 677/2001, with the subsequent modifications and amendments.

(2) In the situations provided for in paragraph (1), if the data were made public manifestly by the data subject or are closely related to the quality of public person of the data subject or the public character of the actions in which he/she is involved, the provisions of art. 11 of Law no. 677/2001, with the subsequent modifications and amendments, are applicable.

(3) The processing of minors' personal data using video surveillance means, carried out exclusively for journalistic, literary or artistic purposes may only be carried out whilst protecting the minors' private life, in accordance with the provisions of Law no. 677/2001, with the subsequent modifications and amendments, as well as with those of other relevant legal provisions.

Art. 11

(1) Data controllers which process personal data using video surveillance are under the obligation to provide the information provided by art. 12 paragraph (1) of Law no. 677/2001, with the subsequent modifications and amendments, including with regard to:

a) the existence of the video surveillance system and the purpose of the processing using such means;

b) the data controller's identity;

c) whether the images are recorded and the categories of recipients;

d) the data subjects' rights and the way in which they may be exercised.

(2) The information provided in paragraph (1) must be brought to the data subjects' attention clearly and permanently. The existence of the video surveillance system will be signalled using a representative image, sufficiently visible and positioned at a reasonable distance from the places where the video surveillance equipment is installed.

Art. 12

(1)The data subjects have the right of information, the right of access to the data, the right of intervention upon the data, the right of opposition, the right not to be subjected to an individual decision and the right to address a court of law, which will be exercised in accordance with the provisions of Law no. 677/2001 with the subsequent modifications and amendments.

Art. 13

(1)Data controllers are under the obligation to adopt the technical and organisational security measures required in order to protect the personal data in accordance with the provisions of art. 19 and 20 of Law no. 677/2001 with the subsequent modifications and amendments.

(2)The processing of personal data using vide surveillance means may only be carried out by the persona authorised by the data controller.

(3)The persons mentioned under paragraph (2) must be trained by the data controller with regard to the legal framework on personal data protection and are under the obligation to conform to it.

Art. 14

(1)The storage period for the data obtained through the use of the video surveillance system must be proportionate with the purpose for which they are processed, but no longer than 30 days, except for the cases expressly provided by law or of well grounded cases.

(2)After the deadline established by the data controller under the conditions mentioned in paragraph (1) has expired, the recordings are destroyed or deleted, as the case may be, depending on the medium on which they were stored.

Art. 15

(1)The processing of personal data using video surveillance means, including their transfer to a third country, must be notified to the National Supervisory Authority for Personal Data Processing before the processing begins, except for the cases which fall under the scope of the decision issued by the president of this authority on the cases in which the notification is not required.

(2)In the situations in which the provisions of the Decision of the National Supervisory Authority for Personal Data Processing no. 11/2009 on establishing the categories of operations of processing personal data which are likely to present special risks for the persons' rights and liberties become applicable, the notification is carried out within the deadline established by art. 2 of the latter.

Art. 16

The infringement of the provisions of this decision entails contraventional responsibility, in accordance with the provisions of Law no. 677/2001, with the subsequent modifications and amendments, if the action is carried out in such a way as to not constitute a criminal offence.

Art. 17

(1)The provisions of this decision do not apply to the processing of personal data using video surveillance means, carried out within the activities provided by art. 2 paragraph (7) of Law no. 677/2001 with the subsequent modifications and amendments.

(2)The provisions of this decision do not apply to the processing of personal data using video surveillance means, carried out by natural persons exclusively for their personal use, if the data in question are not intended to be disclosed.

Art. 18

This decision doesn't infringe on other legal provisions on the use of video surveillance means.

Art. 19

(1) This decision enters into force on the date it is published in the Official Journal of Romania, Part I.

(2) Within 60 days from the entry into force of this decision, personal data controllers that process any of the data provided in art. 1 will carry out the necessary measures to conform with its provisions.

President of the National Supervisory Authority for Personal Data Processing,
Georgeta Basarabescu

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